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LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF)]

Distribution of the 2007, 2008, 2009, 2010, and 2011 Digital Audio Recording Technology Royalty Funds for the Sound Recordings Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Notice announcing commencement of proceeding with request for Petitions to Participate.

SUMMARY: The Copyright Royalty Judges announce the commencement of a proceeding to determine the distribution of the digital audio recording technology royalty fees in the 2007, 2008, 2009, 2010, and 2011 Sound Recordings Funds. The Judges also announce the date by which a party who wishes to participate in this proceeding must file its Petition to Participate and the accompanying filing fee, if applicable.

DATES: Petitions to Participate and the filing fee, if applicable, are due no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested claimants must submit petitions to participate and the filing fee, if applicable, identified by docket number CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF), by using the CRB's electronic filing application, eCRB, at <https://app.crb.gov/>. Claimants without access to the Internet may file using any of the following methods:

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Instructions: Unless submitting online, claimants must submit an original, two paper copies, and an electronic version on a CD. All submissions received must include the Copyright Royalty Board name and docket number. All submissions received will be posted without change on eCRB including any personal information provided.

Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number CONSOLIDATED 2008-3 CRB DD (2007-2011 SRF). For documents not yet uploaded to eCRB (because it is a new system), go to the agency website at <https://www.crb.gov/> or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by phone at (202) 707-7658 or by e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Audio Home Recording Act of 1992 (AHRA), Public Law No. 102-563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution to eligible claimants. 17 U.S.C. 1005, 1007. Royalties are divided into two funds: the Sound Recordings Fund (66-2/3%) and the Musical Works Fund (33-1/3%). These fees in turn are allocated to specific subfunds. 17 U.S.C. 1006(b). The Sound Recordings Fund, which is the subject of this notice, is divided between the Copyright Owners Subfund (60%) and the Featured Recording Artists Subfund (40%), after small portions are distributed to nonfeatured musicians and nonfeatured vocalists. 17 U.S.C. 1006(b)(1).

Distribution of the fees in the two subfunds may occur in one of two ways. The interested copyright parties within each subfund may negotiate the terms of a settlement as to the division of royalty funds. If, after any such agreements, funds remain in dispute, the Copyright Royalty Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy in each subfund. 17 U.S.C. 1006(c) & 1007(c).

The Judges have distributed 100% of the royalties for the Featured Recording Artists Subfund of the 2008 Sound Recordings Fund. *Distribution Order*, Docket No. 2009-3 CRB DD 2008 (June 24, 2009). However, the Judges have ordered only partial distributions of the 2007, 2008, 2009, 2010, and 2011 (from both the Copyright Owners Subfund and the Featured Recording Artists Subfund) because the interested copyright parties have not settled their disputes over remaining amounts. *See, e.g., Order Granting*

AARC's Request for Partial Distribution of 2011 DART Sound Recordings Funds; Docket No. 2012-3 CRB DD 2011 (Sept. 20, 2012); *Order Granting in Part AARC's Supplemental Request for Partial Distribution of 2007, 2008 and 2009 DART Sound Recordings Fund Royalties*, Docket Nos. 2008-3 CRB DD 2007, 2009-3 CRB DD 2008; and 2010-5 CRB DD 2009 (March 8, 2012); *Order Granting AARC's Request for Partial Distribution of 2010 DART Sound Recordings Funds*, Docket No. 2011-6 CRB DD 2010 (Nov. 17, 2011); *Order Granting AARC's Request for Partial Distribution of 2008 DART Sound Recordings Fund/Copyright Owners Subfund Royalties*; Docket No. 2009-3 CRB DD 2008 (Aug. 19, 2009); *Distribution Order*, Docket No. 2008-3 CRB DD 2007 (Oct. 14, 2008).

Consistent with 17 U.S.C. 804(b)(8), the Judges determine that, for the reasons stated above, a controversy exists with respect to the distribution of the 2007, 2009, 2010, and 2011 DART Sound Recordings Fund royalties from the Copyright Owners Subfund and the Featured Recording Artists Subfund and, with respect to 2008, from the Copyright Owners Subfund.

Commencement of Proceeding

By this notice, the Judges announce the commencement of a proceeding to determine the final distribution of DART Sound Recordings Funds (from both the Copyright Owners Subfund and the Featured Recording Artists Subfund) for royalty years 2007, 2009, 2010, and 2011, and from the Copyright Owners Subfund for 2008.

Petitions to Participate

Petitions to Participate must provide all of the information required by 37 CFR

351.1(b)(2). Participants also must identify *by year* each subfund in the Sound Recordings Fund to which they are asserting a claim (*i.e.*, Copyright Owners, Featured Recording Artists, or both).

Petitions to Participate submitted by interested parties whose claims do not exceed \$1,000 must contain a statement that the party will not seek a distribution of more than \$1,000. 37 CFR 351.1(b)(4). No filing fee is required for such parties. Interested parties with claims exceeding \$1,000, however, must submit a filing fee of \$150 with their respective Petitions to Participate, or the petition will be rejected. CASH WILL NOT BE ACCEPTED. Parties filing online through eCRB must pay by credit card. Any party without access to the Internet must pay the filing fee with a check or money order made payable to the "Copyright Royalty Board" and mailed or delivered with a paper claim form, as described in the "Addresses" section above. If a check is returned for lack of sufficient funds, the corresponding Petition to Participate will be dismissed.

Any participant that is an individual may represent herself or himself. All other participants must be represented by counsel. In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states or the District of Columbia and in good standing will be allowed to represent parties before the Copyright Royalty Judges. The Judges will address further procedural matters, including scheduling, after Petitions to Participate have been filed.

Intention to Conduct a Paper Proceeding

In accordance with Section 803(b)(5)(B) of the Copyright Act, the Judges find it appropriate to conduct a paper proceeding in this matter in light of the relatively modest

amount of royalties in dispute after previously approved partial distributions and the anticipated small number of non-settling claimants. In paper proceedings, the Judges enter an order scheduling the filing of a written direct statement by each participant, a response of an opposing participant, and one additional response from the participant. 17 U.S.C. 803(b)(5). The Judges make their determination on the basis of these filings. Any party wishing to comment on the Judges' intention to conduct a paper proceeding should include such comments in its Petition to Participate.

Suzanne M. Barnett,
Chief U.S. Copyright Royalty Judge.
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